Filed 3/7/14 In re Edward F. CA6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re EDWARD F., a Person Coming Under the Juvenile Court Law.	H039809 (Santa Clara County Super. Ct. No. JV37535)
THE PEOPLE, Plaintiff and Respondent, v. EDWARD F., Defendant and Appellant.	

Appellant Edward F. challenges the juvenile court's failure to declare an offense to be a felony or a misdemeanor and seeks a remand for such a declaration. The Attorney General agrees that a remand is required. We too agree and therefore reverse the juvenile court's order.

I. Background

A Welfare and Institutions Code section 602 petition was filed alleging that Edward had committed felony grand theft (Pen. Code, §§ 484, 487, subd. (a)), felony driving or taking a vehicle (Veh. Code, § 10851, subd. (a)), and misdemeanor providing a

false name to a peace officer (Pen. Code, § 148.9). Edward had been the subject of multiple prior sustained petitions, and he was already a ward of the court and on probation.

Edward admitted the grand theft and false name counts and admitted violating his probation. He contested the driving or taking a vehicle count, but the court found that count true after a contested jurisdictional hearing. The court made no oral declaration at the jurisdictional hearing as to whether that count was a felony or a misdemeanor. The minute order from the jurisdictional hearing, which was signed by the judge, identified that count as a felony. Although the minute order contained the court's explicit finding that it was aware of its discretion to declare the grand theft to be either a felony or a misdemeanor and declared it to be a felony, the minute order contained no similar acknowledgement or declaration as to the driving or taking a vehicle count.

At the dispositional hearing, the court continued Edward as a ward, placed him on probation, and set his maximum time of physical confinement at seven years and four months. Again, the court did not orally declare the driving or taking a vehicle count to be a felony or to be a misdemeanor. The minute order from the dispositional hearing, which was signed by the judge, identified the driving or taking a vehicle count as a felony but did not acknowledge the court's discretion to declare this count to be either a felony or a misdemeanor. Edward timely filed a notice of appeal.

II. Analysis

"If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, *the court shall declare* the offense to be a misdemeanor or felony." (Welf. & Inst. Code, § 702, italics added.) The main purpose of this finding is to allow the court to properly calculate the maximum period of physical confinement. (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1206 (*Manzy*).) The finding also ensures that the juvenile court was aware of its discretion to make the

offense either a misdemeanor or a felony. (*Manzy*, at p. 1207.) It is not enough that the offense was charged as a felony, the court calculated the maximum period using a felony-length term, and the minute order referred to the offense as a felony because these facts do not affirmatively reflect that the court was aware of its discretion to declare the offense to be a misdemeanor. (*Manzy*, at pp. 1207-1208.) It is only where the record reflects that the court was both aware of its discretion to treat the offense as a misdemeanor and exercised that discretion that its failure to expressly declare the offense a felony or misdemeanor does not require a remand. (*Manzy*, at p. 1209.)

The record before us contains no indication that the juvenile court was aware of its discretion to declare the driving or taking a vehicle offense to be a misdemeanor rather than a felony. Consequently, as the Attorney General concedes, the juvenile court's order must be reversed.

III. Disposition

The order is reversed.

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Mihara, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P. J.

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Grover, J.